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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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10 11 CHRISTOPHER BRANDON DAVIS,

12 Plaintiff,

13 v.

14 M. PORTILLO, et al.,

15 Defendants.

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Case No.: 1:22-cv-00457 ADA-CDB (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS**

14-DAY OBJECTION PERIOD

17 Plaintiff Christopher Brandon Davis is proceeding *pro se* and *in forma pauperis* in this
18 civil rights action brought pursuant to 42 U.S.C. § 1983.

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I. RELEVANT PROCEDURAL BACKGROUND

20 On April 10, 2023, this Court issued its First Screening Order. (Doc. 19.) The Court found
21 Plaintiff's first amended complaint (Doc. 12) stated the following cognizable claims: (1) First
22 Amendment retaliation claims against Defendant Portillo (claims one & four) and Defendant
23 Brown (claim three); (2) an Eighth Amendment excessive force claim against Defendant Portillo
24 (claim two); (3) an Eighth Amendment failure to protect claim against Defendant Molina (claim
25 one); and (4) a due process clause violation against Defendant Brown (claim three). (Doc. 19 at 4-
26 20.) However, the Court found Plaintiff's first amended complaint failed to state any other
27 cognizable claim against any other defendant. (*Id.* at 20.) Plaintiff was given 21 days to elect one
28 of the following options: (1) to file a second amended complaint curing the deficiencies identified

1 in the order; (2) to notify the Court of his willingness to proceed *only* on the claims found
2 cognizable by the Court; or (3) to file a notice of voluntary dismissal. (*Id.* at 21.)

3 On April 24, 2023, Plaintiff filed a document titled “Response to First Screening Order.”
4 (See Doc. 21.) Plaintiff advises he does not wish to file a second amended complaint and is
5 willing to proceed on the claims found cognizable by the Court in its First Screening Order. (*Id.*)

6 **II. FINDINGS AND RECOMMENDATIONS**

7 Accordingly, and for the reasons set forth in the Court’s First Screening Order (Doc. 19),
8 the Court **RECOMMENDS** that:

9 1. This action PROCEED on the following: (a) First Amendment retaliation claims
10 against Defendant Portillo (claims one & four) and Defendant Brown (claim three);
11 (b) an Eighth Amendment excessive force claim against Defendant Portillo (claim
12 two); (c) an Eighth Amendment failure to protect claim against Defendant Molina
13 (claim one); and (d) a due process clause violation against Defendant Brown (claim
14 three), in their individual capacities, pursuant to 42 U.S.C. § 1983; and
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16 2. The remaining claims in Plaintiff’s first amended complaint be DISMISSED.

17 These Findings and Recommendations will be submitted to the United States District
18 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of
19 service of these Findings and Recommendations, a party may file written objections with the
20 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
21 Recommendations.” Failure to file objections within the specified time may result in waiver of
22 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
23 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24 IT IS SO ORDERED.

25 Dated: April 25, 2023


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UNITED STATES MAGISTRATE JUDGE